



Legislative
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Resolution 1

FISCAL NOTE

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Prime Sponsors:

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Bill Topic: REPLACE MOTOR FUEL TAXES WITH ADDITIONAL SALES TAX

**Summary of
Fiscal Impact:**

- ☒ State Revenue *(conditional)*
- ☒ State Expenditure *(conditional)*
- ☐ State Transfer
- ☒ TABOR Refund *(conditional)*
- ☒ Local Government *(conditional)*
- ☐ Statutory Public Entity

This concurrent resolution refers a measure to voters at the November 2020 election which, if approved, will repeal or reduce to rates of zero the state motor fuel excise tax and replace it with an increase in the state sales and use tax for the purpose of funding surface transportation at the state and local levels. It will conditionally decrease state and local government revenue and increase expenditures beginning in FY 2021-22.

**Appropriation
Summary:**

No appropriation is required.

**Fiscal Note
Status:**

This preliminary fiscal note reflects the bill draft requested by the Transportation Legislation Review Committee. While all agencies were canvassed for this fiscal note, additional time is required to obtain and further review information submitted by agencies. The fiscal note will be updated if new or additional information becomes available.

Table 1
State Fiscal Impacts Under Resolution 1

		FY 2021-22	FY 2021-22	FY 2022-23
Revenue	State Highway Fund*	-	(\$4.1 million)	\$3.7 million
Expenditures	General Fund	-	at least \$235,418	-
Transfers		-	-	-
TABOR Refund	General Fund	-	(\$4.1 million)	Not estimated

* Table 1 reflects the state revenue impact only. For the overall revenue impact to the Highway Users Tax Fund, see Table 4.

Summary of Legislation

This concurrent resolution refers a constitutional amendment to the November 2020 ballot that, if approved by 55 percent of voters, will repeal, or reduce to rates of zero, the state excise taxes on motor fuels, including gasoline, diesel, and other liquid motor fuels, on July 1, 2021. State motor fuel excise taxes on compressed natural gas, liquefied natural gas, liquified petroleum gas, and aviation fuel are exempt from the repeal. The resolution also requires the state to levy an additional sales and use tax, beginning July 1, 2021, at a rate that is calculated to generate the amount of net revenue needed to offset 99 percent of the state's revenue loss for FY 2021-22 resulting from the repeal of the motor fuel excise taxes.

The net revenue generated by the increased sales tax rate is credited to the Highway Users Tax Fund (HUTF) and allocated to the state, counties, and municipalities in a similar manner to which motor fuel excise taxes are credited under current law. All new sales and use tax revenue attributable to the rate change must be used exclusively for construction, maintenance, and supervision of the state's surface transportation system.

Sales tax revenue that exceeds FY 2021-22 motor fuel excise tax revenue is exempt from TABOR as a voter-approved revenue change.

Background

Colorado motor fuel excise taxes. The state's motor fuel excise taxes consist of the gasoline tax and the special fuel tax. First enacted in 1933, Colorado's gasoline tax has been set at 22¢ per gallon since 1991; it includes both conventional gasoline and gasohol. The special fuel tax rate is 20.5¢ per gallon, and includes diesel fuel, primarily, but also kerosene and ethanol blends containing over 10 percent ethanol. Beginning in 2014, compressed natural gas (CNG), liquified natural gas (LNG), and liquefied petroleum gas (LPF) are subject to tax rates that change annually. A history of the state's gasoline tax rates is displayed in Table 2.

Table 2
History of Colorado Gasoline Tax Rate

Year	1933	1953	1967	1981	1983	1986	1989	1991
Rate per Gallon	4¢	6¢	7¢	9¢	12¢	18¢	20¢	22¢

Source: Department of Revenue.

Gasoline tax in Colorado historically comprises about 80 percent of the total motor fuel tax collections, while special fuel taxes comprise close to 20 percent and natural gas and propane around 0.3 percent. Motor fuel taxes are allocated to the HUTF, which is the primary source of state highway system funding in Colorado. In FY 2018-19, HUTF revenue was approximately \$1.1 billion, with motor fuel taxes comprising about 60 percent of this revenue at \$654.9 million. All motor fuel excise tax revenue is subject to TABOR.

Sales and use taxes. Sales and use taxes were introduced in Colorado in 1935 and 1937, respectively. The sales and use tax rate for the state has been set at 2.9 percent since 2001. Sales taxes are owed on sales of tangible personal property and select services. The use tax complements the sales tax and is owed when sales tax is not collected. A history of the state's sales and use tax rate changes is displayed in Table 3.

Table 3
History of Colorado Sales and Use Tax Rates

Year	1935	1965	1983	1984	2001
Rate	2.0%	3.0%	3.5%	3.0%	2.9%

Source: Department of Revenue.

Sales and use taxes totaled \$3.4 billion in revenue for the state during FY 2018-19, with sales tax comprising about 90.0 percent of the total sales and use tax collections. Sales and use tax revenue is allocated to the General Fund via the Old Age Pension Fund. All sales and use tax revenue is subject to TABOR.

Federal gas tax. The federal gasoline tax rate is \$0.184 per gallon and has been in place since 1993. This tax will continue to be levied on motor fuels in the state.

HUTF distribution. The HUTF revenue is allocated to the Department of Transportation (CDOT), counties, and municipalities based on statutory formulas. The terms "off-the-top," "first stream," and "second stream" are used to explain the distribution of revenue from the HUTF. Prior to the first stream distribution, appropriations are made to the Department of Revenue, for highway-related functions, and to the Department of Public Safety, for the Colorado State Patrol. These appropriations are referred to as "off-the-top" deductions. Remaining first stream revenue is distributed to CDOT (65 percent), counties (26 percent), and municipalities (9 percent). Second stream revenue is distributed to CDOT (60 percent), counties (22 percent), and municipalities (18 percent).

Assumptions

This analysis is based on the September 2019 Legislative Council Staff revenue forecast for motor fuel excise taxes, sales taxes, and use taxes. For FY 2022-23, which is outside the current forecast period, tax revenue streams are grown by the compound average annual growth rate from FY 2000-01 to FY 2017-18 for each stream: 1.3 percent for motor fuel excise taxes, and 3.1 percent for combined sales and use taxes.

For FY 2020-21, the bill is expected to increase sales and use tax revenue by 18.1 percent to offset the impact of the revenue reduction from reducing the motor fuel excise tax to zero. This fiscal note assumes a 0.51 percent supplementary sales and use tax rate to achieve the 99 percent offset. The 0.51 percent rate would be in addition to the 2.90 percent current law rate, resulting in a new total sales and use tax rate of 3.41 percent. A tax rate increase of this magnitude is not expected to reduce consumption of taxable goods and services on which the tax is assessed.

Forecasts of motor fuel excise tax revenue do not distinguish between special fuel excise tax collected on diesel fuel, which is affected by the bill, and special fuel excise tax collected on natural gas and propane, which are exempt. In FY 2018-19, natural gas and propane accounted for 0.3 percent of total fuel excise tax revenue. This fiscal note assumes that the portion of fuel tax attributable to natural gas and propane will remain a small fraction of total fuel tax revenue.

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Current state law includes a sales and use tax exemption for gasoline and special fuel that is subject to the fuel excise tax. This analysis assumes that gasoline and special fuel will not be subject to either the 2.90 percent current law sales and use tax or the 0.51 percent supplementary tax. To the extent that these fuels are subject to sales and use tax, the bill will increase General Fund and HUTF revenue by greater amounts than presented here.

State Revenue

Conditional upon voter approval, this concurrent resolution is estimated to decrease state revenue by \$4.1 million in FY 2021-22, and increase state revenue by \$3.7 million in FY 2022-23 to the State Highway Fund. In future years, revenue increases are expected to continue, since sales tax revenue historically grows at a faster rate than motor fuel tax revenue.

Highway Users Tax Fund Distribution. Table 4 presents the revenue distribution impact of the concurrent resolution using the first stream and second stream HUTF allocations pursuant to current state law. Since in the first fiscal year there is a 1 percent decrease in revenue, the distributions at the state, county, and city levels will decrease proportionately according to their existing distribution formulas. In FY 2022-23 and future years, an increase in distributions is expected at all levels, based on the expected increase in sales and use tax revenue relative to fuel excise tax revenue.

Table 4
HUTF Distributional Impacts Under Resolution 1

	FY 2021-22	FY 2022-23
State Highway Fund/CDOT	(\$4.1 million)	\$3.7 million
Counties	(\$1.6 million)	\$1.4 million
Municipalities	(\$1.0 million)	\$0.9 million
Total Revenue*	(\$6.7 million)	\$5.9 million

** Totals may not sum due to rounding.*

State Expenditures

Conditional upon voter approval, this concurrent resolution is expected to increase one-time General Fund expenditures by at least \$233,978 in FY 2021-22 for administrative changes made by the Department of Revenue (DOR). In addition, beginning in FY 2020-21, state expenditures from the State Highway Fund in the Colorado Department of Transportation (CDOT) will be impacted by the change in the amount distributed as a result of the tax revenue changes under the concurrent resolution. The DOR's impacts are shown in Table 5 and described below. Impacts to CDOT are also discussed below.

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Table 5
Expenditures Under Resolution 1

	FY 2020-21	FY 2021-22
Department of Revenue		
Computer Programming and Testing	-	\$62,610
Form Management	-	\$15,840
Vendor Outreach	-	\$156,968
Call Center and Audit	-	Not estimated
Total Cost	-	At least \$235,418

** Centrally appropriated costs are not included in the bill's appropriation.*

Department of Revenue. The DOR will have a one-time increase in General Fund expenditures of at least \$235,418 in FY 2021-22 for computer programming and tax form changes related to both sales and use taxes and motor fuel excise taxes. DOR is also anticipated to have a workload increase, and potentially an expenditure increase, related to outreach and education to inform vendors of tax changes.

- *Computer programming.* If approved by voters, the resolution necessitates changes to the DOR's computer systems estimated at \$62,610. The GenTax system is expected to require 156 hours of programming by a contractor at a rate of \$250 per hour, for a total of \$39,000. The GenTax programming changes will be tested by DOR, which will require 640 hours of testing at a rate of \$24 per hour, for a total of \$15,360. Finally, programming changes in the Department of Motor Vehicles DRIVES software system are required and will total \$8,250 for 33 hours of programming at \$250 an hour and include testing.
- *Form management.* The resolution also necessitates changes to 11 tax forms. Form change costs are expected to total \$15,840 at a rate of \$1,440 per form. Form changes are completed in the Department of Personnel and Administration using reappropriated DOR funds.
- *Vendor outreach.* The DOR will need to inform sales tax license holders and motor fuel distributors of the changes to both taxes. Outreach campaigns require mailings to each establishment, 156,400 as of writing, at a cost of \$0.55 for postage and \$0.07 per mailer for a total of \$96,968. Additionally, DOR broadcasts the information at a cost of \$60,000.
- *Call center and audit.* Changes to the sales and use tax rates and motor fuel taxes will likely result in additional call volume into DOR's taxpayer services call center, as well as a higher workload for tax audit and compliance. Additionally, bills may need to be sent out or refunds issued if sales tax-collecting vendors are unaware of the new sales and use tax rate or if motor fuel distributors continue to collect motor fuel tax. These costs have not yet been estimated.
- *Fuel tax administration and reporting.* Departmental expenditures for administration of the fuel excise tax are not expected to decrease by more than a minimal amount, as the department will continue to be responsible for fuel tax administration and reporting consistent with its obligations under the International Fuel Tax Agreement and federal regulations.

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Colorado is a member state of the International Fuel Tax Agreement (IFTA) and subject to federal reporting regulations related to the federal fuel excise tax. The IFTA requires auditing and monitoring by member states unrelated to the state fuel tax. Because these requirements will still exist under the concurrent resolution, most state infrastructure related to fuel sale and administration will continue. The concurrent resolution is not expected to affect the state's membership in the IFTA, though it could decrease the amount that the state receives through the IFTA from trucking company fuel taxes apportioned among states where these companies operate.

Department of Transportation. Expenditures from the State Highway Fund for construction and maintenance of state highways will potentially decrease in FY 2021-22 and increase annually in FY 2022-23 and ongoing years. The amount and timing of expenditures is determined by the Transportation Commission, which directs SHF moneys to state highway purposes.

TABOR refund. This concurrent resolution is expected to decrease state revenue subject to TABOR by \$4.1 million in FY 2021-22. This change in state revenue will affect TABOR refund obligations if the state collects a TABOR surplus in FY 2021-22.

This concurrent resolution also decreases revenue subject to TABOR beginning in FY 2022-23 to the extent that excise tax revenue would increase in these years relative to FY 2020-21. TABOR estimates are not available for FY 2022-23.

Election expenditure impact — existing appropriations. This bill includes a referred measure that will appear before voters at the November 2020 general election. While no additional appropriation is required in this bill, certain election costs are incurred by the state when ballot measures are referred to voters, including reimbursements to counties from the Department of State Cash Fund in the Secretary of State's Office and newspaper publication of text and titles and inclusion in the statewide ballot information booklet, paid from the Ballot Analysis Revolving Fund in the Legislative Department.

Local Government

Local government revenue from the HUTF distributions will decrease by \$2.6 million in FY 2021-22. Revenue to counties and cities is expected to grow faster than the growth rate for historical motor fuel tax revenue in future years, by approximately \$1.4 million for counties and \$0.9 million for cities in FY 2022-23, since sales and use tax revenue has grown at a faster pace historically than motor fuel tax revenue. These figures are shown in Table 4 above.

State disbursements to local governments are subject to local TABOR limits. Jurisdictions where voters have not authorized an exemption of these funds from TABOR may be required to issue additional TABOR refunds as a result of this bill.

Effective Date

If approved by voters at the 2020 election, this measure takes effect upon proclamation of the Governor and requires the legislature to enact legislation during the 2021 legislative session so that changes under the measure can take effect by July 1, 2021.

State and Local Government Contacts

Counties	Revenue	Municipalities	Regional Transportation District
Personnel	Special Districts	Transportation	Information Technology